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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,360	09/25/2006	Misa Hanita	Q93023	9859
23373 7590 01/22/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
WOOD, ELLEN S				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
01/22/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/567,360

**Applicant(s)**

HANITA ET AL.

**Examiner**

ELLEN S. WOOD

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/04/2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 and 3-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/CIS)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date 08/22/2008

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1 and 3-16 are rejected under 35 U.S.C. 102(a) as being anticipated by Kitano et al. (JP 2004-182344, hereinafter "Kitano").

In regards to claim 1, Kitano discloses a packing container that is an interlayer that has an islands-in-the-sea structure, where the sea section is a resin component A and the oxygen absorbing component B [0008]. The island portions have an average particle diameter of smaller than 3.5 micrometers [0009]. The average particle diameter (N/M) would not be smaller than 20 ( $\text{cm}^{-1}$ ) [0049].

In regards to claim 3, Kitano discloses that the resin most suitable would be a thermoplastic polyester, such as polyethylene terephthalate [0015].

In regards to claim 5, Kitano disclose that oxygen absorbing functional component comprises a gas barrier resin, an oxidizing organic component and a transition metal catalyst [0021].

In regards to claim 6, Kitano discloses that the gas barrier resin is a polyamide resin such a MXD6, which contains chiefly xylylenediamine. The terminal amino group concentration of not smaller than  $40 \text{ eq}/10^6 \text{ g}$  with a dicarboxylic acid component [0020].

In regards to claims 7-8, Kitano discloses that the oxidizing organic component comprises a polymer derived from a polyene [0022-24].

In regards to claim 9, Kitano discloses that the oxidizing organic component is present in the oxygen absorbing functional component in an amount of 2 to 10% by weight [0027].

In regards to claim 10, Kitano discloses that the transition metal catalyst is present in the oxygen absorbing functional component in an amount of 10 to 1000 ppm [0031].

In regards to claim 11, Kitano discloses that the transition metal catalyst is preferably a cobalt salt of carboxylic acid [0028-29].

In regards to claim 12, Kitano discloses that the oxidizing components are distributed by island shape, thus not in the sea portion [0021].

In regards to claim 13, Kitano disclose that oxygen absorbing functional component comprises a gas barrier resin, an oxidizing organic component and a transition metal catalyst [0021].

In regards to claim 14, Kitano discloses that the gas barrier resin is a polyamide resin such a MXD6, which contains chiefly xylylenediamine. The terminal amino group concentration of not smaller than  $40 \text{ eq}/10^6\text{g}$  with a dicarboxylic acid component [0020].

In regards to claim 15, Kitano discloses that the packaging container has a multi-layer structure with an interlayer that is oxygen absorbing [0043].

In regards to claim 16, Kitano discloses that the oxidizing organic component is present in the oxygen absorbing functional component in an amount of 2 to 10% by weight [0027].

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1 and 3-16 have been considered but are moot in view of the new ground(s) of rejection.
4. Claim 2 has been canceled.

### ***Conclusion***

5. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 08/22/2008 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/  
Supervisory Patent Examiner, Art Unit 1794

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